

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1392

Introduced by Assembly Member Bermudez

February 21, 2003

~~An act to amend Section 4999.3 of the Business and Professions Code to amend Section 2220.05 of the Business and Professions Code, relating to medical services.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1392, as amended, Bermudez. ~~Telephone medical advice services—Medical Board of California: prosecutorial and investigative resources.~~

Existing law, the Medical Practice Act, creates the Medical Board of California within the Department of Consumer Affairs. Under the act, the board is responsible through its Division of Medical Quality for the regulation of the practice of physicians and surgeons. The act requires the board to prioritize its investigative and prosecutorial resources of specified cases in a certain manner, and authorizes the board to prioritize cases that are not specified as long as those cases are given lower priority.

This bill would add felony and misdemeanor criminal acts to the list of specified cases and would authorize the board to determine that requests for expenditure of investigative or prosecutorial resources cannot be pursued without detriment to the investigation and prosecution of the specified cases. The bill would require the board to provide the requester with a written finding to that effect and to provide referral to another state or local agency with jurisdiction to act, if

appropriate. This bill would exclude from its provisions cases alleging criminal violations of the law.

~~Existing law provides for the registration of telephone medical advice services with the Telephone Medical Advice Services Bureau. Existing law prohibits a business entity from providing telephone medical advice services to a patient at a California address, unless the business is registered. Existing law authorizes the Department of Consumer Affairs to suspend, revoke, or otherwise discipline a registrant or deny an application for registration as a telephone medical advice service based on certain factors.~~

~~This bill would also authorize the department to suspend, revoke, or discipline a registrant or deny an application for registration if the registrant provides financial incentives to employees for limiting patient access to health care.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 4999.3 of the Business and Professions~~
- 2 ~~SECTION 1. Section 2220.05 of the Business and Professions~~
- 3 ~~Code is amended to read:~~
- 4 2220.05. (a) In order to ensure that its resources are
- 5 maximized for the protection of the public, the Medical Board of
- 6 California shall prioritize its investigative and prosecutorial
- 7 resources ~~to ensure~~ so that physicians and surgeons representing
- 8 the greatest threat of harm are identified and disciplined
- 9 expeditiously. Cases involving any of the following allegations
- 10 shall be handled on a priority basis, as follows, with the highest
- 11 priority being given to cases in the first paragraph:
- 12 (1) Gross negligence, incompetence, or repeated negligent acts
- 13 that involve death or serious bodily injury to one or more patients,
- 14 such that the physician and surgeon represents a danger to the
- 15 public.
- 16 (2) Drug or alcohol abuse by a physician and surgeon involving
- 17 death or serious bodily injury to a patient.
- 18 (3) Repeated acts of clearly excessive prescribing, furnishing,
- 19 or administering of controlled substances, or repeated acts of
- 20 prescribing, dispensing, or furnishing of controlled substances
- 21 without a good faith prior examination of the patient and medical

1 reason therefor. However, in no event shall a physician and
2 surgeon prescribing, furnishing, or administering controlled
3 substances for intractable pain consistent with lawful prescribing,
4 including, but not limited to, Sections 725, 2241.5, and 2241.6 of
5 this code and Sections 11159.2 and 124961 of the Health and
6 Safety Code, be prosecuted for excessive prescribing and prompt
7 review of the applicability of these provisions shall be made in any
8 complaint that may implicate these provisions.

9 (4) Sexual misconduct with one or more patients during a
10 course of treatment or an examination.

11 (5) Practicing medicine while under the influence of drugs or
12 alcohol.

13 (6) *Felony and misdemeanor criminal acts.*

14 (b) ~~The board may by regulation prioritize cases involving an~~
15 ~~allegation of conduct that is not described in subdivision (a). Those~~
16 ~~cases prioritized by regulation shall not be assigned a priority~~
17 ~~equal to or higher than the priorities established in subdivision (a)~~

18 (1) *To ensure that the resources of the board are available for*
19 *expenditure in a manner consistent with the protection of the*
20 *public specified in this section, the board may determine that*
21 *requests for expenditure of its investigative or prosecutorial*
22 *resources, for cases not listed in subdivision (a), cannot be pursued*
23 *without detriment to the purpose of this section.*

24 (2) *If the board finds that a case cannot be pursued pursuant to*
25 *paragraph (1), the board shall provide that finding in writing to the*
26 *requester and shall provide, if appropriate, referral to other state*
27 *or local agencies that may have jurisdiction to act.*

28 (3) *This subdivision does not apply to requests that allege*
29 *criminal violation of any statute.*

30 (c) The Medical Board of California shall indicate in its annual
31 report mandated by Section 2312 the number of temporary
32 restraining orders, interim suspension orders, and disciplinary
33 actions that are taken in each priority category specified in
34 subdivisions (a) and (b).

35 ~~Code is amended to read:~~

36 ~~4999.3. (a) The department may suspend, revoke, or~~
37 ~~otherwise discipline a registrant or deny an application for~~
38 ~~registration as an in-state or out-of-state telephone medical advice~~
39 ~~service based on any of the following:~~

- 1 ~~(1) Incompetence, gross negligence, or repeated similar~~
2 ~~negligent acts performed by the registrant or an employee of the~~
3 ~~registrant.~~
4 ~~(2) An act of dishonesty or fraud by the registrant or an~~
5 ~~employee of the registrant.~~
6 ~~(3) The commission of an act, or being convicted of a crime,~~
7 ~~that constitutes grounds for denial or revocation of licensure~~
8 ~~pursuant to a provision of this division.~~
9 ~~(4) Providing financial incentives to employees for limiting~~
10 ~~patient access to health care.~~
11 ~~(b) The proceedings shall be conducted in accordance with~~
12 ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division~~
13 ~~3 of Title 2 of the Government Code, and the department shall have~~
14 ~~all powers granted therein.~~
15 ~~(c) Copies of any complaint against an in-state or out-of-state~~
16 ~~telephone medical advice service shall be forwarded to the~~
17 ~~Department of Managed Health Care.~~
18 ~~(d) The department shall forward a copy of any complaint~~
19 ~~submitted to the department pursuant to this chapter to the entity~~
20 ~~that issued the license to the licensee involved in the advice~~
21 ~~provided to the patient.~~

